

REMARKS

Originally numbered Claim 21 should also be cancelled.

The rejection of Claims 1, 2, 4-12, 25 and 27-30 on grounds of obviousness-type double patenting is traversed. Reconsideration is requested on grounds that the term of any patent issuing on the instant application will not extend any right to exclude *vis-à-vis* U.S. Patent No. 6,274,249, whose term expires September 12, 2017.

In addition, the Office Action does not address the obviousness issue from the point of different Q_I values and diffraction intensities I in different planes. Accordingly, a *prima facie* case of obviousness-type double patenting has not been established.

The rejections of Claims 1-4, 7-12 and 23-26 as being anticipated by the Braendle '933 publication under 35 USC § 102(e), and of Claims 5, 6 and 27-30 as being unpatentable over the Braendle publication in view of EP '982 under 35 USC §103(a) are traversed. Reconsideration of each of these rejections is requested.

First, the Braendle publication was filed as a ^{Q33} German language PCT application on September 3, 1997 and was filed in the U.S. as a "continuation" on April 22, 199⁹~~7~~. It thus appears that the effective § 102(e) date is April 22, 199⁹~~7~~.

Given the fact that both applications are owned by the same inventive entity, the § 103(a) rejection is also misplaced based upon § 103(c).

With regard to the contents of the Braendle publication, we further note that it teaches only applying at least two hard material layers of the kind MeX, whereby in one of these layers Q_I is at most 1, and in the other of these layers Q_I

is at least 1. It does not teach providing for a group of tools at least one MeX layer, in which the claimed parameters set forth in Claim 1 are valid for the one or more of such MeX layers. With or without the hypothetical combination with EP '982, therefore, a *prima facie* case of obviousness based on substantial record evidence has not been established.


Early and favorable action are thus earnestly solicited.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket #622/43770CO).

Respectfully submitted,

August 4, 2003



James F. McKeown
Registration No. 25,406

CROWELL & MORING, LLP
P.O. Box 14300
Washington, DC 20044-4300
Telephone No.: (202) 624-2500
Facsimile No.: (202) 628-8844

JFM/acd
080310.43770CO